

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

NATASHA DELPHINE SHAFFER, )  
Plaintiff, ) No. CV-11-0284-FVS  
v. )  
MICHAEL J. ASTRUE, Commissioner ) ORDER GRANTING  
of Social Security, ) DEFENDANT'S MOTION  
Defendant. ) FOR SUMMARY JUDGMENT

**BEFORE THE COURT** are cross-motions for summary judgment.

(ECF No. 13, 17). Attorney Maureen Rosette represents plaintiff; Special Assistant United States Attorney Leisa A. Wolf represents the Commissioner of Social Security (defendant). After reviewing the administrative record and the briefs filed by the parties, the court **GRANTS** defendant's Motion for Summary Judgment.

## JURISDICTION

Plaintiff applied for a period of disability and disability insurance benefits on September 19, 2007, alleging disability as of September 6, 2000 (Tr. 132). Plaintiff amended her alleged onset date from September 6, 2000, to February 11, 2002, at the administrative hearing (Tr. 41-42). The application was denied initially and on reconsideration.

Administrative Law Judge (ALJ) Moira Ausems held a hearing on January 8, 2010 (Tr. 38-79), and issued an unfavorable decision on March 5, 2010 (Tr. 19-31). The Appeals Council denied review on July 13, 2011 (Tr. 1-6). The ALJ's March 2010 decision became the

1 final decision of the Commissioner, which is appealable to the  
2 district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed  
3 this action for judicial review on August 1, 2011 (ECF No. 1, 4).

4 **STATEMENT OF FACTS**

5 The facts have been presented in the administrative hearing  
6 transcript, the ALJ's decision, and the briefs of the parties.  
7 They are only briefly summarized here.

8 Plaintiff was born on April 15, 1976 (Tr. 126) and was 26  
9 years old on the alleged onset date. Plaintiff was involved in a  
10 motor vehicle accident in 2000 and, as a result, underwent an  
11 anterior lumbar interbody fusion in July 2002 and a posterior  
12 lumbar interbody fusion in January 2003 (Tr. 49). She reported  
13 she last worked from October 2001 to February 2002 as a part-time  
14 cashier at Bed, Bath and Beyond (Tr. 48). Plaintiff indicated she  
15 ended that employment because her manager wanted to make her a  
16 full-time employee and he was not able to give her enough breaks  
17 to sit down (Tr. 47).

18 At the time of the administrative hearing, plaintiff lived in  
19 a home with her husband, her mother and her two children, ages 6  
20 and 3 (Tr. 51). She stated that her husband "does everything,"  
21 and she has a great support group of girlfriends who assist her  
22 with errands and the cleaning of her home (Tr. 51-52). She  
23 testified she had been involved with the women's group since her  
24 6-year-old was 2 (Tr. 52), or since approximately 2006 (Tr. 52).  
25 She stated her husband does the grocery shopping as well as all  
26 the housework, vacuuming, laundry, etc. (Tr. 60, 64).

27 Plaintiff testified that she could probably sit a maximum of  
28 20 minutes at one time (Tr. 56). She stated most of her time is

1 spent laying down on a couch in an attempt to relieve her symptoms  
2 (Tr. 56-57). She indicated she would spend about six hours of an  
3 eight-hour period laying down (Tr. 57). Plaintiff stated lifting  
4 a gallon of milk is a lot for her (Tr. 58-59), she could stand  
5 about 20 minutes before needing to sit or lay down (Tr. 61), she  
6 is not able to bend and pick something off the floor, nor is she  
7 able to climb a flight of stairs (Tr. 62-63), and she has  
8 difficulty sleeping at night because she is not able to get  
9 comfortable due to her back problems (Tr. 63).

## **SEQUENTIAL EVALUATION PROCESS**

The Social Security Act defines disability as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Social Security Act also provides that a plaintiff shall be determined to be under a disability only if any impairments are of such severity that a plaintiff is not only unable to do previous work but cannot, considering plaintiff's age, education and work experiences, engage in any other substantial gainful work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B). Thus, the definition of disability consists of both medical and vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9<sup>th</sup> Cir. 2001).

26 The Commissioner has established a five-step sequential  
27 evaluation process for determining whether a person is disabled.  
28 20 C.F.R. §§ 404.1520, 416.920. Step one determines if the person

1 is engaged in substantial gainful activities. If so, benefits are  
2 denied. 20 C.F.R. §§ 404.1520(a)(4)(I), 416.920(a)(4)(I). If  
3 not, the decision maker proceeds to step two, which determines  
4 whether plaintiff has a medically severe impairment or combination  
5 of impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii),  
6 416.920(a)(4)(ii).

7 If plaintiff does not have a severe impairment or combination  
8 of impairments, the disability claim is denied. If the impairment  
9 is severe, the evaluation proceeds to the third step, which  
10 compares plaintiff's impairment with a number of listed  
11 impairments acknowledged by the Commissioner to be so severe as to  
12 preclude substantial gainful activity. 20 C.F.R. §§  
13 404.1520(a)(4)(ii), 416.920(a)(4)(ii); 20 C.F.R. § 404 Subpt. P  
14 App. 1. If the impairment meets or equals one of the listed  
15 impairments, plaintiff is conclusively presumed to be disabled.  
16 If the impairment is not one conclusively presumed to be  
17 disabling, the evaluation proceeds to the fourth step, which  
18 determines whether the impairment prevents plaintiff from  
19 performing work which was performed in the past. If a plaintiff  
20 is able to perform previous work, that plaintiff is deemed not  
21 disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At  
22 this step, plaintiff's residual functional capacity (RFC) is  
23 considered. If plaintiff cannot perform past relevant work, the  
24 fifth and final step in the process determines whether plaintiff  
25 is able to perform other work in the national economy in view of  
plaintiff's residual functional capacity, age, education and past  
work experience. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v);  
28 *Bowen v. Yuckert*, 482 U.S. 137 (1987).

1 The initial burden of proof rests upon plaintiff to establish  
2 a *prima facie* case of entitlement to disability benefits.  
3 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9<sup>th</sup> Cir. 1971); *Meanel v.*  
4 *Apfel*, 172 F.3d 1111, 1113 (9<sup>th</sup> Cir. 1999). The initial burden is  
5 met once plaintiff establishes that a physical or mental  
6 impairment prevents the performance of previous work. The burden  
7 then shifts, at step five, to the Commissioner to show that (1)  
8 plaintiff can perform other substantial gainful activity and (2) a  
9 "significant number of jobs exist in the national economy" which  
10 plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9<sup>th</sup>  
11 Cir. 1984).

## **STANDARD OF REVIEW**

Congress has provided a limited scope of judicial review of a Commissioner's decision. 42 U.S.C. § 405(g). A Court must uphold the Commissioner's decision, made through an ALJ, when the determination is not based on legal error and is supported by substantial evidence. See *Jones v. Heckler*, 760 F.2d 993, 995 (9<sup>th</sup> Cir. 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9<sup>th</sup> Cir. 1999). "The [Commissioner's] determination that a plaintiff is not disabled will be upheld if the findings of fact are supported by substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572 (9<sup>th</sup> Cir. 1983) (citing 42 U.S.C. § 405(g)). Substantial evidence is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n. 10 (9<sup>th</sup> Cir. 1975), but less than a preponderance. *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9<sup>th</sup> Cir. 1989). Substantial evidence "means such evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citations omitted). "[S]uch

1 inferences and conclusions as the [Commissioner] may reasonably  
2 draw from the evidence" will also be upheld. *Mark v. Celebreeze*,  
3 348 F.2d 289, 293 (9<sup>th</sup> Cir. 1965). On review, the Court considers  
4 the record as a whole, not just the evidence supporting the  
5 decision of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20,  
6 22 (9<sup>th</sup> Cir. 1989) (*quoting Kornock v. Harris*, 648 F.2d 525, 526  
7 (9<sup>th</sup> Cir. 1980)).

8 It is the role of the trier of fact, not this Court, to  
9 resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If  
10 evidence supports more than one rational interpretation, the Court  
11 may not substitute its judgment for that of the Commissioner.  
12 *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579  
13 (9<sup>th</sup> Cir. 1984). Nevertheless, a decision supported by  
14 substantial evidence will still be set aside if the proper legal  
15 standards were not applied in weighing the evidence and making the  
16 decision. *Brawner v. Secretary of Health and Human Services*, 839  
17 F.2d 432, 433 (9<sup>th</sup> Cir. 1987). Thus, if there is substantial  
18 evidence to support the administrative findings, or if there is  
19 conflicting evidence that will support a finding of either  
20 disability or nondisability, the finding of the Commissioner is  
21 conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9<sup>th</sup> Cir.  
22 1987).

23 **ALJ'S FINDINGS**

24 At step one, the ALJ found plaintiff has not engaged in  
25 substantial gainful activity during the period from her alleged  
26 onset date, February 11, 2002, through the date last insured,  
27 September 30, 2006 (Tr. 21). At step two, she found plaintiff had  
28 severe impairments of "lumbar degenerative disc disease status-

1 post surgeries; obesity; post-traumatic stress disorder;  
2 depression; and pain disorder associated with both psychological  
3 factors and a general medical condition" (Tr. 21). At step three,  
4 the ALJ found plaintiff's impairments, alone and in combination,  
5 did not meet or medically equal one of the listed impairments in  
6 20 C.F.R., Appendix 1, Subpart P, Regulations No. 4 (Tr. 22). The  
7 ALJ assessed plaintiff's RFC during the relevant time period and  
8 determined that plaintiff could perform sedentary work except that  
9 she could not climb ladders, ropes or scaffolds; she could only  
10 stoop, kneel, bend, crouch, crawl and climb ramps or stairs on a  
11 less than occasional basis; and she could not perform tasks that  
12 would require the ability to work at a level higher than three on  
13 the specific vocational profile (Tr. 24).

14 At step four, the ALJ found that plaintiff could not perform  
15 her past relevant work as a material handler, sorter, food server,  
16 home health attendant, sales clerk, general clerk and cashier (Tr.  
17 29). However, the ALJ concluded at step five that, considering  
18 plaintiff's age, education, work experience and RFC, and based on  
19 vocational expert testimony, there were jobs that exist in  
20 significant numbers in the national economy that plaintiff could  
21 perform, including the jobs of Charge Account Clerk, Surveillance  
22 System Monitor and Telephone Quotation Clerk (Tr. 29-30). The ALJ  
23 thus determined that plaintiff was not under a disability within  
24 the meaning of the Social Security Act at any time from February  
25 11, 2002, the alleged onset date, through September 30, 2006, the  
26 date last insured (Tr. 31).

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**ISSUES**

Plaintiff alleges the ALJ erred because the substantial weight of the record evidence supports a more limited physical RFC determination. (ECF No. 14 at 12). Plaintiff specifically argues that the ALJ erred by finding that her testimony regarding her symptoms lacks credibility. (ECF No. 14 at 12-14). Plaintiff also contends the ALJ failed to properly evaluate the medical opinions of her treating physician, Michael Sikora, M.D. (ECF No. 14 at 14-17).

**DISCUSSION**

As explained by the ALJ, to be entitled to a period of disability and disability insurance benefits, plaintiff must establish disability between her alleged onset date, February 11, 2002, and her date last insured, September 30, 2006 (Tr. 25). Records which do not specifically address plaintiff's functioning during this period of time are not particularly relevant.

**I. Plaintiff's Credibility**

Plaintiff first argues that the ALJ erred by failing to consider her testimony. (ECF No. 14 at 12-14). Plaintiff contends that the ALJ improperly found her less than fully credible and should have, instead, adopted plaintiff's testimony regarding her physical limitations. *Id.* Defendant asserts that the ALJ's conclusion that plaintiff was not entirely credible had substantial support in the record and should be upheld. (ECF No. 16 at 13-16).

It is the province of the ALJ to make credibility determinations. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9<sup>th</sup> Cir. 1995). However, the ALJ's findings must be supported by specific

1 cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9<sup>th</sup> Cir.  
2 1990). Once the claimant produces medical evidence of an  
3 underlying medical impairment, the ALJ may not discredit testimony  
4 as to the severity of an impairment because it is unsupported by  
5 medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9<sup>th</sup> Cir.  
6 1998). Absent affirmative evidence of malingering, the ALJ's  
7 reasons for rejecting the claimant's testimony must be "clear and  
8 convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9<sup>th</sup> Cir. 1995).  
9 "General findings are insufficient: rather the ALJ must identify  
10 what testimony is not credible and what evidence undermines the  
11 claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v.*  
12 *Shalala*, 12 F.3d 915, 918 (9<sup>th</sup> Cir. 1993).

13 The ALJ determined that plaintiff's medically determinable  
14 impairments could reasonably be expected to cause the alleged  
15 symptoms; however, plaintiff's statements concerning the  
16 intensity, persistence and limiting effects of these symptoms were  
17 not credible to the extent they were inconsistent with the ALJ's  
18 RFC assessment (Tr. 25). The ALJ found plaintiff retained the RFC  
19 to perform a limited range of sedentary exertion level work during  
20 the relevant time period, from February 11, 2002 to September 30,  
21 2006 (Tr. 24).

22 Following plaintiff's 2000 motor vehicle accident, an MRI in  
23 October 2001 revealed a minimal disc bulge, slight left paramedian  
24 disc protusion at L4-5, unchanged since last exam on October 8,  
25 2000, that did not impact neural structures, a mild posterior disc  
26 protusion of L5-S1, and mild degenerative changes in her lower  
27 lumber facet joints (Tr. 25, 289). In June 2002, Plaintiff was  
28 examined by Jeffery Larson, M.D., with complaints of back and

1 right leg pain (Tr. 25, 266). Dr. Larson offered her an anterior  
2 lumbar interbody fusion at L5-S1 which she underwent in July 2002  
3 (Tr. 25, 266, 428). On August 20, 2002, plaintiff indicated to  
4 Dr. Larson that her symptoms were resolving (Tr. 26, 465).  
5 Plaintiff reported she was "quite happy with the outcome of her  
6 surgery" (Tr. 465). However, on November 19, 2002, plaintiff  
7 reported to Dr. Larson that her right leg pain had returned,  
8 although it was not as sharp, and her back pain was the same as it  
9 was prior to surgery (Tr. 26, 315). As a result of her pain  
10 complaints, plaintiff underwent a posterior lumbar interbody  
11 fusion on January 2, 2003 (Tr. 300). On February 12, 2003,  
12 plaintiff reported significant posterolateral leg pain to Dr.  
13 Larson (Tr. 26, 300). A lumbar spine MRI completed in February  
14 2003 showed no neural compression (Tr. 26, 341). On May 7, 2003,  
15 Dr. Larson referred plaintiff to Karen Stanek, M.D., for an  
16 evaluation of her chronic right L5 radiculopathy (Tr. 341-342).

17 On May 28, 2003, Dr. Stanek examined plaintiff, who was  
18 approximately 6  $\frac{1}{2}$  weeks pregnant at the time (Tr. 339-340).  
19 Plaintiff reported she was independent in her activities of daily  
20 living (Tr. 339). Dr. Stanek recommended plaintiff discontinue  
21 straight-leg stretching, which she opined might be chronically  
22 irritating plaintiff's sciatic nerve, apply heat and ice several  
23 times a day, and walk as much as she was able (Tr. 26, 340). On  
24 June 25, 2003, plaintiff returned to Dr. Larson (Tr. 336).  
25 Plaintiff reported her back pain had improved tremendously, her  
26 right leg pain had also improved, and her right L5 radiculopathy  
27 had resolved (Tr. 26, 336). February 2, 2004 lumbosacral spine x-  
28 rays revealed no evidence of abnormal motion at L5-S1 and no

1 instability at the fusion level (Tr. 26, 327). On March 16, 2004,  
2 Dr. Larson indicated plaintiff was doing "extremely well" and had  
3 no new problems (Tr. 26, 413). On May 3, 2005, plaintiff  
4 presented for an annual exam and reported doing very well with no  
5 specific concerns (Tr. 26, 353).

6 In October 2005, plaintiff was seen by Michael Sikora, M.D.,  
7 for a recheck on her depression (Tr. 480-481). Plaintiff  
8 indicated a secondary concern of lower back pain; however, the  
9 exam revealed a pleasant female in no apparent distress, her gait  
10 was normal, her straight leg raise tests were negative, and her  
11 motor strength, sensation and reflexes in the lower extremities  
12 were within normal limits (Tr. 480). Plaintiff was diagnosed with  
13 sciatica (Tr. 481). On June 7, 2006, plaintiff complained of  
14 ongoing low back pain with radiation down her legs (Tr. 491).  
15 Examining personnel noted mild to moderate pain and a reduced  
16 range of motion (Tr. 491). On June 27, 2006, a lumbosacral MRI  
17 revealed satisfactory alignment of vertebral bodies, "somewhat  
18 moderate" central canal stenosis due to ligamentous hypertrophy,  
19 and well-preserved foramen (Tr. 27, 507).

20 The undersigned agrees with the ALJ that the above medical  
21 evidence from the relevant time period, as discussed above, does  
22 not reflect the level of limitation plaintiff has alleged in this  
23 case (Tr. 25). While the limitations plaintiff identified at the  
24 administrative hearing may have described her physical abilities  
25 at the time of the administrative hearing on January 8, 2010, that  
26 restricted level of functioning is not consistent with the  
27 information provided in the medical record from the relevant time  
28 period in this case. As noted by the ALJ, plaintiff's condition

1 appeared to resolve at least for a few years during the relevant  
2 time period, and "[f]or all intents and purposes, the claimant  
3 appeared to be taking care of one or two children while her  
4 husband worked" during that period of time (Tr. 27).

5 The ALJ indicated that, although plaintiff testified that she  
6 had daily assistance from a "support group" of girlfriends, her  
7 first mention of this group in the evidence occurred in July 2009  
8 (Tr. 535), nearly 3 years after the date last insured (Tr. 27).  
9 She never mentioned to doctors during the relevant time period  
10 that she had additional assistance at home.

11 As further noted by the ALJ, Plaintiff's testimony at the  
12 administrative hearing regarding her physical limitations is  
13 inconsistent with the level of limitation she alleged in her  
14 Disability Report (Tr. 27). She testified that she could not lift  
15 any significant amount of weight, but stated in her Function  
16 Report she could lift 20 to 30 pounds occasionally (Tr. 149, 157).

17 Plaintiff's daily activities are also inconsistent with her  
18 allegations of disabling limitations during the relevant time  
19 period. *Fair v. Bowen*, 885 F.2d 597, 603 (9<sup>th</sup> Cir. 1989) (it is  
20 well-established that the nature of daily activities may be  
21 considered when evaluating credibility). As indicated by the ALJ,  
22 plaintiff reported she prepares meals daily, folds and puts away  
23 laundry, washes dishes, sweeps, vacuums, and mows the lawn if  
24 someone starts the mower for her (Tr. 27, 154). Plaintiff  
25 additionally noted she did "everything" for her 7-month-old son at  
26 the time (Tr. 153). Plaintiff also reported to Dr. Stanek on May  
27 28, 2003, that she was independent in her activities of daily  
28 living (Tr. 339).

1       After reviewing the record, the undersigned finds that the  
2 reasons provided by the ALJ for discounting plaintiff's subjective  
3 complaints are clear, convincing, and fully supported by the  
4 record. Accordingly, the ALJ did not err by concluding that  
5 plaintiff's subjective complaints regarding the extent of her  
6 functional limitations during the relevant time period were not  
7 fully credible in this case.

8 **II. Treating Physician**

9       Plaintiff next argues that the ALJ failed to provide  
10 convincing rationale for rejecting the opinion of her treating  
11 physician, Dr. Sikora. (ECF No. 14 at 14-17). Defendant responds  
12 that the ALJ gave specific and legitimate reasons for discounting  
13 Dr. Sikora's opinions, and these reasons were supported by  
14 substantial evidence in the record. (ECF No. 16 at 5-13).

15       In a disability proceeding, the courts distinguish among the  
16 opinions of three types of physicians: treating physicians,  
17 physicians who examine but do not treat the claimant (examining  
18 physicians) and those who neither examine nor treat the claimant  
19 (nonexamining physicians). *Lester v. Chater*, 81 F.3d 821, 839  
20 (9<sup>th</sup> Cir. 1996). The Ninth Circuit has held that "[t]he opinion  
21 of a nonexamining physician cannot by itself constitute  
22 substantial evidence that justifies the rejection of the opinion  
23 of either an examining physician or a treating physician." *Id.* at  
24 830. Rather, an ALJ's decision to reject the opinion of a  
25 treating or examining physician, may be based *in part* on the  
26 testimony of a nonexamining medical advisor. *Andrews v. Shalala*,  
27 53 F.3d 1035, 1043 (9<sup>th</sup> Cir. 1995). The ALJ must also have other  
28 evidence to support the decision such as laboratory test results,

1 contrary reports from examining physicians, and testimony from the  
2 claimant that was inconsistent with the physician's opinion. *Id.*  
3 at 1042-1043. Greater weight must be given to the opinion of  
4 treating physicians, and in the case of a conflict "the ALJ must  
5 give specific, legitimate reasons for disregarding the opinion of  
6 the treating physician." *Matney v. Sullivan*, 981 F.2d 1016, 1019  
7 (9<sup>th</sup> Cir. 1992).

8 On January 7, 2010, Dr. Sikora, plaintiff's treating  
9 physician, provided a letter which opined that plaintiff has been  
10 "disabled and sedentary" since her motor vehicle accident in 2000  
11 (Tr. 620). On July 29, 2010, almost five months after the ALJ's  
12 March 2010 decision was rendered, Dr. Sikora provided another  
13 letter which stated that plaintiff "has been disabled before  
14 September 30, 2006 and remains indefinitely and permanently  
15 medically disabled" (Tr. 624).

16 As noted by the ALJ, outside of Dr. Sikora, none of  
17 plaintiff's medical providers have opined that plaintiff could not  
18 work because of her impairments. As discussed above, the medical  
19 evidence of record supports the ALJ's determination that plaintiff  
20 retained the RFC to perform a limited range of sedentary exertion  
21 level work during the relevant time period. *See supra*. Moreover,  
22 state agency medical consultant, Howard Platter, M.D., reviewed  
23 plaintiff's medical evidence through 2007 and opined on December  
24 31, 2007, that plaintiff could perform work at the light exertion  
25 level (Tr. 523-530). On April 23, 2008, Dr. Platter's opinion was  
26 affirmed by another state agency medical consultant, Norman  
27 Staley, M.D. (Tr. 532). The ALJ ultimately determined that, when  
28 considering the added impact of plaintiff's obesity, a relegation

1 to sedentary exertion better defined plaintiff's capacity during  
2 the relevant time period (Tr. 29).

3 Dr. Sikora's opinion in the January 2010 letter that  
4 plaintiff is "sedentary"<sup>1</sup> does not correlate with a finding of  
5 complete disability as defined by the Social Security Act. See 42  
6 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Furthermore, it is the  
7 role of the ALJ to determine whether a claimant is "disabled"  
8 within the meaning of the Social Security Act, and that  
9 determination is based on both medical and vocational components.  
10 *Edlund*, 253 F.3d at 1156.

11 Dr. Sikora's 2010 opinion that plaintiff is "disabled" was  
12 additionally rendered more than three years after her date last  
13 insured and is unsupported by objective medical findings. (Tr.  
14 28). While the record includes a medical report that plaintiff  
15 was examined by Dr. Sikora in October 2005, the appointment was  
16 for a recheck on her depression, and plaintiff only indicated a  
17 secondary concern of lower back pain at the time (Tr. 480-481).  
18 Dr. Sikora's 2005 exam revealed a pleasant female in no apparent  
19 distress, her gait was normal, her straight leg raise tests were  
20 negative, and her motor strength, sensation and reflexes in the  
21

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22 <sup>1</sup>Section 404.1567 of 20 C.F.R. defines sedentary work as  
23 follows:

24 Sedentary work involves lifting no more than 10 pounds at a  
25 time and occasionally lifting or carrying articles like  
26 docket files, ledgers, and small tools. Although a  
27 sedentary job is defined as one which involves sitting, a  
28 certain amount of walking and standing is often necessary in  
carrying out job duties. Jobs are sedentary if walking and  
standing are required occasionally and other sedentary  
criteria are met.

1 lower extremities were within normal limits (Tr. 480). This  
2 October 2005 report does not evidence limitations greater than  
3 those provided in the ALJ's RFC determination in this case. Dr.  
4 Sikora's 2010 opinion that Plaintiff has been disabled since her  
5 2000 motor vehicle accident is not supported by his own records.  
6 See *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9<sup>th</sup> Cir. 2001) (an  
7 ALJ may discredit a treating physician's opinion that is  
8 unsupported by rationale or treatment notes and offers no  
9 objective medical findings to support the existence of alleged  
10 conditions).

11 The undersigned also finds it surprising that Dr. Sikora  
12 would opine that plaintiff has been disabled since 2000. First,  
13 it does not appear that plaintiff was seen by Dr. Sikora until  
14 2005 (Tr. 480-481). He would thus have no firsthand knowledge of  
15 her condition prior to 2005. Second, the record reflects that  
16 plaintiff worked from October 2001 to February 2002 as a part-time  
17 cashier (Tr. 48). It is therefore apparent that plaintiff was  
18 able to continue to work after the 2000 motor vehicle accident.  
19 Plaintiff additionally testified that she voluntarily ended that  
20 employment because her manager wanted to make her a full-time  
21 employee at that time (Tr. 47). The fact that her manager wanted  
22 to convert plaintiff from part-time to full-time employment in  
23 February 2002 suggests that plaintiff's impairments did not  
24 substantially limit her effectiveness as a cashier at that time.  
25 This further undermines Dr. Sikora's opinion that plaintiff "has  
26 been disabled since her MVA in 2000."

27 Based on the foregoing, the ALJ's decision to accord little  
28 weight to Dr. Sikora's opinion that plaintiff has been disabled

1 since her motor vehicle accident in 2000 is fully supported by the  
2 record evidence. The undersigned thus finds that the ALJ did not  
3 err by according Dr. Sikora's opinion little weight.

4 **CONCLUSION**

5 Having reviewed the record and the ALJ's conclusions, this  
6 court finds that the ALJ's decision is supported by substantial  
7 evidence and free of legal error. Accordingly,

8 **IT IS HEREBY ORDERED:**

9 1. Defendant's Motion for Summary Judgment (**ECF No. 17**) is  
10 **GRANTED.**

11 2. Plaintiff's Motion for Summary Judgment (**ECF No. 13**) is  
12 **DENIED.**

13 **IT IS SO ORDERED.** The District Court Executive is directed  
14 to file this Order, provide copies to the parties, enter judgment  
15 in favor of Defendant, and **CLOSE** this file.

16 **DATED** this 25th day of January, 2013

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18 S/Fred Van Sickle  
19 Fred Van Sickle  
20 Senior United States District Judge  
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